

**TOWN OF HERNDON, VIRGINIA**

**PLANNING COMMISSION**

**STAFF REPORT**

**JUNE 18, 2007**

**Title:**

**APPLICATION FOR A SPECIAL EXCEPTION, SE#07-05 –  
TEMPORARY ASSEMBLY SITE FOR DAY WORKERS, ONE YEAR  
EXTENSION OF CONDITIONAL USE PERMIT #05-11 WITH  
AMENDED CONDITIONS:.**

**Staff Contact:**

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**Summary Description:**

This application is for a special exception to permit the continuation of a temporary assembly site for day workers (CU #05-11 approved 8/17/05 and operated by Project Hope and Harmony) with amended conditions for a period of one year and with provision for an alternative operator identified in this report as Operator B.

Addresses:	1481 Sterling Road (Rt. 606) Herndon, Virginia.
Owner/Applicant:	Town of Herndon Box 427 Herndon, VA 20172-0427 (703) 435-6804
Tax Map Reference:	10-3-002, Parcel 7D (shown as 7E) 10-003-009, Parcel F
Total Site Area:	12.5 acres
Zoning:	R-10, Residential
Use:	Public Facility

Existing Use on Site:	Herndon Community Inspectors Office Herndon Department of Public Works Shop Herndon Recycling Center Temporary Assembly Site for Day Workers
Adjacent Use and Zoning:	North: Residential, R-10 (Town of Herndon) Residential, PDH6 (Commercial Component) South: Residential, PDH (Town of Herndon) East: Residential, R-10 (Town of Herndon) West: PDGI, Industrial/Commercial R-1, Residential C-1, Commercial
Comprehensive Plan: Designation	“Community Facilities”
Adjacent Comprehensive Plan Designations:	North: “Neighborhood Conservation” “Business” (Loudoun County) South: “Neighborhood Conservation” East: “Neighborhood Conservation” West: “Business” (Loudoun County)
Previous Conditional Use Permits:	CU#05-11 CU # 89-02 CU #89-2A CU #00-3

### **Fiscal Impact:**

Some interior improvements to a portion of the former police station are necessary to facilitate its use by Operator B. The Department of Public Works and the community inspectors will continue to use the majority of the building, but Operator B will be housed in the northeast corner of the structure. To accommodate the three uses in one structure several modifications are needed.

### **Terminology and Standards:**

On July 1, 2006, the Town amended the zoning ordinance and changed its terminology. The term “conditional use permit” was changed to “special exception.”

Article VII of the zoning ordinance defines Temporary Assembly Site for Day Workers as “A place where workers or potential workers assemble to seek or accept

casual, intermittent, or temporary work off-site; where employers, or potential employers, visit to hire or to seek to hire workers for such work; and as to which the zoning approval is limited in duration.”

Article II, §78-202.3(a) describes a special exception as “a use that is potentially compatible with the other uses permitted in a zoning district, but requires individual review of location, design, configuration, and density and intensity of use and usually requires the imposition of conditions to ensure the appropriateness of the use at a particular location.”

The language governing a Temporary Assembly Site for Day Workers is found in Article IV §78-403.7(6), Temporary Uses and Structures, and more specifically in §78-403(G)(6), which provides the following standard conditions in addition to any specifically imposed conditions:

- a. The use shall be permitted by special exception for not more than two years after the date of Town Council approval, with up to three one-year extensions granted by Town Council possible. No further extensions will be granted for such use on same site.
- b. No more than one assembly site, whether formal or informal, shall be permitted in the Town.
- c. Size and Location:
  1. The area of operation on the site shall be defined in the special exception application and the operations shall be confined to that defined area.
  2. No lot or parcel on which is located the site shall be less than one acre in size. The site may occupy all or part of the lot or parcel.
- d. Site Management
  1. The maximum number of workers to be present on the site at any one time shall be set forth in the special exception application. The number of parking spaces and bicycle racks, the vehicular circulation system, and the size of the facilities shall accommodate this maximum number.
  2. Written operating procedures governing the site shall be submitted as part of the special exception application and made a part of the conditions of this special exception. Among other operating procedures the hours of operation of the site shall be set forth.
  3. The site and any buildings or structures on the site shall be maintained in good order, free from litter or trash, and in a presentable, well maintained and safe manner, as determined by the zoning administrator using recognized standards.
  4. All activities conducted on the site shall be carried out in a lawful manner, as determined by competent Town, Virginia, or federal authorities. Nothing in this subparagraph shall be

construed to suggest or require that the zoning administrator enforce any set of laws other than the Town's zoning ordinance.

5. Sufficient staff shall be provided to control activities during operation of the site.
6. No more than one mobile commercial food vendor shall operate at or on the site at any one time. This vendor may be present at the site only during operating hours of the site.

e. Site Features

1. Shelter from the elements, potable water and toilets for the workers may be provided. Temporary, modular, or manufactured units may be permitted. There must be approval of the architectural review board of all architectural features of all buildings or structures prior to installation on the site.
2. A gravel, concrete, asphalt milling, or asphalt surface shall be required for all vehicular and pedestrian circulation areas. The surface materials shall be as specified by the Town Council.
3. Screening shall be provided on any side of the site adjacent to any property zoned or used for residential purposes.

In addition to the above conditions, which are specific to a temporary assembly site for day workers, all special exceptions may be approved upon a determination as to whether or not, and the extent to which the proposed use meets the standards found in Article II, §78-202.3(e)(1) of the Zoning Ordinance (2007). The standards of §78-202.3(e)(1) are:

1. Is consistent with the comprehensive plan.
2. Is free of conflict with any provision of this chapter and related Town regulations or any other applicable local, state, or federal laws and regulations.
3. Affects adversely the health or safety of persons residing or working in the neighborhood of the proposed use.
4. Consistent with the purpose and intent of the zoning district in which it is located, or will improve compatibility among uses and will ensure efficient development within the Town.
5. Minimizes adverse visual impact of the proposed use on adjacent lands.
6. Contributes to a logical and orderly development pattern consistent with accepted or emerging planning practices.
7. Minimizes adverse impact on surrounding lands regarding service delivery, parking and loading, odors, noise, glare, and vibration, and should not create a nuisance.
8. Avoids significant adverse impacts on the property values of surrounding lands or substantially and permanently injures the use of neighboring property for those uses that are rarely permitted in the zoning district.

9. Does not significantly and adversely impact the natural environment, including but not limited to water, air, noise, stormwater management, wildlife, vegetation, wetlands, and the natural functioning of the environment.
10. Results in development that is adequately served by transportation facilities, including whether or not a substantial deterioration of the level of service on the Town's transportation network would occur and whether or not the proposed use is designed to ensure safe ingress and egress onto site and safe road conditions on and around the site.
11. Results in development that is adequately served by public facilities (roads, potable water and sewage, schools, parks, police, and fire and emergency medical facilities).
12. If considered infill and redevelopment, is consistent with the Redevelopment and Infill Guidelines, Chapter 2, Land Use Plan, of the Town's comprehensive plan.
13. If located in the floodplain overlay district, meets floodplain overlay standards.

**Alternatives:**

1. Recommend approval of the special exception based upon the determination that the submission adequately meets the standards of §78-202.3(e)(1) and §78-403.7(6).
2. Recommend approval of the special exception with conditions to ensure compliance with the standards.
3. Recommend denial of the special exception based upon the determination that the submission fails to adequately meet the standards.

**Staff Recommendations:**

Recommendation #2.

**Description and Background:**

The approved conditional use permit, CU#05-11, for the existing site became effective September 15, 2005 and the site commenced operation on December 14, 2005. At the time of approval the Town Council imposed 32 conditions on the use. A copy of the approved conditions is Attachment #5 of this report.

The currently operating Temporary Assembly Site for Day Workers is located behind the former Town of Herndon Police Station at 1481 Sterling Road, now utilized by the Community Development Department's community enforcement staff. The site consists of a control booth/storage structure, portable toilets with sinks, a tent (20' x 40') with tables and benches, bicycle racks, trash receptacles, a privately owned mobile food vendor, a total of 15 parking spaces plus a pull over area for larger vehicles, and a single-width skirted trailer (12' x 60'). The site and

all related vehicle traffic are confined to that portion of the property east of the existing building. Vehicle traffic related to the assembly site utilizes Sterling Road and that portion of the property that is undisputedly located within the Town of Herndon and Fairfax County.

Per the zoning ordinance, and reiterated within the conditions of CU #05-11, the first approval of a temporary assembly site for day workers is limited to no more than two years, but up to 3 one year extensions may be approved through the submission and subsequent approval, if they are approved, of separate special exception applications. The applicant for CU #05-11 was Project Hope and Harmony/Reston Interfaith. Project Hope and Harmony/Reston Interfaith are the current operators of the site, identified in this report as Operator A.

The current application is for a one year extension of the use at the existing location. The Town is the applicant of the current special exception application because the Town is the property owner and it is the intent of the Town, as the property owner, to replace the operator of the use at a future date. To achieve this end, the application currently under review provides two distinct sets of proposed conditions, one set for Operator A and one for the prospective operator, Operator B. Several of the conditions are similar due to a number of shared attributes and concerns under either operator.

This application allows for the continuation of the operation under the control of Project Hope and Harmony/Reston Interfaith (Operator A) in a manner similar to the current operation of the site until such time as an alternative operator can be found who will verify that all workers utilizing the site are legally eligible to work in the United States. Some minor clarifications and amendments based upon the current operator's experience over the past year and a half are proposed with this application.

The Town has prepared and advertised a Request for Proposal to obtain the services of the new operator (Operator B.) This application proposes that the use, under the control of Operator B, shall include several features not currently provided under Operator A. Under Operator B the site shall include, within the building located at 1481 Sterling Road, a reception/registration area, an assemblage area/waiting room for workers, kitchen, lavatories, office space for staff, storage space and room for a copier. Some of the existing exterior site features may be retained or re-established dependent upon Operator B's preference and needs.

The first set of proposed conditions is for the use during the tenure of Project Hope and Harmony/Reston Interfaith. These proposed conditions are very similar to the existing conditions, but incorporate several amendments. The amendments include refinements based upon 18 months of experience, removal of conditions that were finite in their purpose and where the activity tied to the date has now passed, and clarifications.

**Staff Comments:**

The staff believes that the operation, as defined by this application and the proposed conditions, meets §78-403.7(6), the specific standards for a temporary assembly site for day workers. These standards unequivocally state that there shall be only one assembly site for day workers within the Town. It is the intent of this special exception that the transition from Operator A to Operator B be seamless.

The area of operation is clearly defined and the parcel in question exceeds one acre. The application states that under both operators the maximum number of workers that can be on the site at any one time is 150 and adequate facilities are provided. This application includes two different sets of written operating procedures, reflecting the operation under Operator A and Operator B. The requirements to maintain the site and operate in a lawful manner are stated in both sets of conditions. The number of staff members and the possibility of a mobile food vendor being on site are also provided for in both sets of conditions. A site plan indicating the site layout and elements under Operator A was reviewed and approved during the original process and a layout plan reflecting those improvements has been submitted with this application. A proposed layout plan for the operation under the control of Operator B is also part of this application.

The thirteen standards utilized during the consideration of all special exceptions have varying degrees of applicability to any application. As stated in the ordinance, the Planning Commission and Town Council must determine to what extent the proposed use meets the standards.

The site is designated within the comprehensive plan as “community facility.” The current use is office and industrial in nature, but is permitted in a residential zoning district and considered as a community facility serving the needs of the community. The proposed use is similar in that it serves the needs of the community by providing a public marketplace for workers and employers and by limiting the occurrence of waiting groups of individuals seeking employment elsewhere in Town.

The staff believes that the use, as proposed within this application, meets all other pertinent sections of the zoning ordinance. No additional impervious area is proposed and adequate landscaping, parking, lighting and screening exist on site. The number of restrooms and the appearance and construction of facilities meet Town and standards. The question of whether or not the current operation meets all federal and state laws has been argued and debated for over two years. The intent of this application is to pave the way for an operator who will check work eligibility, the principal issue of the debate.

The use to date does not appear to have adversely impacted the health or safety of persons in the area of the site. The site is located in a manner that affords access along major thoroughfares. The issue of trespassing is covered within the

conditions under both operators. Although there have been some reports of trespassing, no individual has been identified. When such incidents were reported, the operator of the site warned and re-educated the workers. Of the reports made to the Herndon Police Department, the majority of complaints occurred within the first three months following the opening of the site.

The parcel in question is an already developed parcel housing a quasi-industrial public use and offices for public purposes. Such uses are permitted within the R-10 zoning district with the granting of a special exception. Vehicle traffic does not need to utilize residential streets to reach the site and the primary entrance is located on Route 606. The uses surrounding the property are well established with the exception of a few under-developed residential properties located between the convenience store/automobile repair facility and the newly constructed light industrial/office park on the west side of Rock Hill Road. A vacant commercial parcel is located at the northeast corner of Rock Hill Road and Sterling Road. The under-developed or vacant properties are shown as planned for business uses in the Loudoun County Comprehensive Plan. The property to the north has been rezoned to PDH6, a planned residential district, but is proffered as a commercial retail use. Town staff does not believe that the presence of the proposed use will adversely alter future development in the area.

Varying amounts of landscaping, fencing, distance and berms screen the site from actively residential properties. Following a brief period of confusion concerning the use of Rock Hill Road and the prohibitions against its use, no formal complaints concerning vehicle access to the site have been recorded. In addition there have been no complaints concerning noise, glare, fumes or vibration emanating from the site.

The staff has found no issues related to the proposed use that would adversely impact the natural environment of the Town. Due to the absence of additional impervious surface or other development impacts there is no requirement for additional stormwater related improvements.

There is no anticipated decrease in the level of service of adjacent roads due to this application. There has been no indication that the use as it currently operates has overburdened the roadways in the vicinity. The standard public facilities are adequate to serve the existing and proposed site.

The site is not considered infill under the comprehensive plan, since it is temporary in nature and its facilities are so very limited compared to the pre-existing structures and uses on the remainder of the property. The property is not located within the Floodplain Overlay District.

The staff has received some complaints concerning the current operation of the site. Several months ago Zoning received a complaint concerning the selection and operation of the mobile food vendor. The complainant, a food vendor, was upset



that the operator had entered into a contract with a single vendor and had selected a vendor of a particular ethnic background. The staff has not received any other complaints about the food vendor. The food vendor was checked per the conditions and found to have all necessary approvals except for one. This omission was quickly corrected by the vendor. The approved conditional use permit limits the number of food vendors to one. Town staff supports the operator's decision to enter into a contract with a single food vendor. This agreement limits confusion, the possibility of more than one vendor being on site at a time, and makes it easier to ensure compliance with the conditions.

The Zoning Administrator received a complaint from an individual who witnessed workers being picked up at the site by a bus. It was his understanding that the site closed for the remainder of the day, and he was informed by some of the workers that they were being taken to the National Mall for a political rally. Town staff investigated the complaint. The operator of the site stated that a group of workers left the site in a bus to attend a day of seminars at a church in D.C. Town staff contacted the church and verified that a group of workers from the site did go to the church for several seminars and activities concerning citizenship and employment on the day in question. The log book, in which operations at the site are recorded, showed that some workers remained at the site and the site remained staffed and opened. Faced with conflicting information, the staff informed the operator of the center that if the workers wish to attend an off-site function in the future, the bus should pick them up elsewhere. The Town Council was made aware of the allegation. The staff attempted to treat this complaint in a manner similar to complaints against other special exception uses of an institutional nature. No additional complaints of a similar nature have been received.

A third complaint was received concerning charitable groups handing out free food to the workers to take home with them at the end of the day. The charities were entering the site to distribute the food. An investigation revealed that several places of worship in the area are providing the workers at the site with free food. Technically the charities are not vendors and do not fall under the category of mobile food vendor. The staff determined that if the Town as the property owner did not wish the charities to enter the site that this should be handled through the Town's power as the property owner. The Town Manager and Town Attorney were informed of the staff's findings.

If this application is approved, the applicant, current operator and staff are proposing several conditions to be made a part of the approving resolution. As mentioned above, the conditions for Operator A differ somewhat from those for Operator B although many of the conditions are similar.

### **Proposed Conditions:**

Below are the adopted conditions (CU#05-11) with the current operator's proposed modifications. The staff supports the majority of the proposed amendments, as they

are based upon experience and have been discussed with and agreed to in concept by Town staff. One of the amendments concerns the renaming of the worker's "Governance Team," envisioned as a governance body comprised of workers selected by the workers, to the "assembly of workers." Experience has shown that the workers prefer to make decisions as a body rather than through elected representatives. The decision is made by a simple majority vote of the workers registered and present on the day in question. The Operating Policies and Procedures referred to in the conditions is Attachment 6 of this report.

- a. The Operating Policies and Procedures dated ~~08/03/05~~ 05/31/07 *[updated]* and as amended by these conditions are incorporated into this approval as a condition, and any change in the operational procedures shall require an amendment to this conditional use permit. It shall be the responsibility of Project Hope and Harmony, Reston Interfaith and the ~~Governance Team~~ assembly of workers to enforce the procedures.
- b. The site shall generally be open to laborers and the public from 6:00 a.m. to ~~11:00 a.m.~~ 12:00 noon Monday through Friday, and from 7:00 a.m. until ~~12:00 noon~~ 1:00 p.m., Saturday and Sunday. Staff, in consultation with the assembly of workers, may elect, on any given day, to extend those hours by up to two (2) hours, depending on demand for workers. Staff and volunteers are is allowed on site outside of the maximum allowable ~~these~~ hours of operation for the purposes of planning, reporting, troubleshooting, answering employer enquiries and other work-related issues. Certain workers may be called back to the site to meet with a specific employer, as long as staff members are present and the call back is within the maximum allowable hours of operation. Community volunteers accompanied by staff of Project Hope & Harmony/Reston Interfaith shall be allowed on site outside of the maximum allowable hours of operation to perform maintenance, beatification, or other site improvements. The site shall not be open on the following days ~~Federal Holidays~~, except as staff and the assembly of workers agree to otherwise: New Year's Day January 1, Martin Luther King Jr. Day, Presidents Day, Memorial Day, Independence Day July 4<sup>th</sup>, Labor Day, Columbus Day Veterans Day, Thanksgiving and December 25<sup>th</sup> Christmas. The site may close without notice due to dangerous weather conditions or insufficient staffing.
- c. In addition to any other procedures and guidelines developed by ~~the applicant~~ Project Hope and Harmony/Reston Interfaith and the ~~governance team~~ assembly of workers, ~~the applicant~~ Project Hope and Harmony/Reston Interfaith shall inform each worker upon initial arrival and registration at the site that only public sidewalks and streets shall be used when coming to and from the site and that trespassing on

private property is illegal and will not be tolerated. Furthermore, an aerial photo of the site shall be posted at the site indicating the preferred routes to the site.

- d. ~~The applicant~~ Project Hope and Harmony/Reston Interfaith shall inform each employer coming to the site that, if they are providing workers a ride back from the employer's job site, the drop off point should not be the day labor facility but rather another point mutually convenient to the employer and laborer. Laborers may be dropped off at the day labor site for the purpose of retrieving a vehicle or bicycle left there. This information may be provided orally or in writing.
- e. The Code of Conduct, ~~as set forth in the Project Hope and Harmony Operating Policies and Procedures~~, [*The Code of Conduct is a separate document that may change as necessary, but any proposed amendment must be sent to the Department of Community Development at least 2 weeks prior to adoption for review and approval.*] shall be enforced by the representatives of Project Hope and Harmony, Reston Interfaith and the ~~governance team~~ assembly of workers during operating hours. It is understood that as the site becomes operational and additional experience is gained the role of the ~~governance team~~ assembly of workers shall increase and the Code of Conduct may be modified to reflect actual experience and need but any proposed modification shall be submitted to the Town of Herndon Department of Community Development at least two weeks prior to adoption for review and approval.
- f. To ensure safe and orderly conduct, the site shall be staffed all times while the site is in operation by at least 3 employees or volunteers of Project Hope and Harmony or Reston Interfaith, of which at least one must be a paid staff member.
- g. The ~~governance team~~ assembly of workers shall impose sanctions against workers identified by the Town of Herndon Police, Loudoun Sheriff's Department or Fairfax County Police as having trespassed on private property when coming or going to the site; and the ~~governance team~~ assembly of workers shall investigate and where appropriate impose sanctions against workers that are identified by members of the surrounding communities or the Town of Herndon staff as having trespassed on private property when coming or going from the site.
- h. The ~~governance team~~ assembly of workers shall impose appropriate sanctions against workers who are identified by the Town of Herndon Police, Loudoun Sheriff's Department or Fairfax County Police as having remained at the site after closing or returned to the site after closing and remained longer than needed to retrieve their bicycle or

vehicle, and ~~The governance team assembly of workers~~ shall investigate and where appropriate impose sanctions against workers that are identified by members of the surrounding residential or business communities or the Town of Herndon staff as having remained at the site after closing or returned to the site after closing for a purposed other than authorized by these conditions for a period of time longer than deemed valid~~and remained longer than needed to retrieve their bicycle or vehicle.~~ In general, a worker who remains on the site for longer than one-half hour without a valid reason will be considered to have remained too long.

- i. ~~Prior to commencement of the use and construction or installation of the facilities, as shown on the plan dated July 5, 2005~~ construction or installation of any new facilities on the site, a site plan revision based upon T.P. #89-60 #R-05-24 shall be submitted to the Town for administrative review and approval.
- ~~j. The temporary day worker assembly site shall not be opened to workers and potential employers until the site plan has been approved, and all required building, zoning and Architectural Review Board approvals have been obtained and the trailer and portable restrooms have been installed, and an Employment Anti-Solicitation Ordinance is in place. The applicant shall have an additional 6 months to obtain all necessary approvals and complete construction of the remaining facilities.[Obsolete]~~
- ~~j.~~ k. If the bicycle racks prove inadequate for the demand, ~~a larger rack or~~ an additional rack will be provided by Project Hope and Harmony/Reston Interfaith ~~the applicant~~. Prior to installation of the new rack, Project Hope and Harmony/Reston Interfaith ~~the applicant~~ shall submit a letter to the Department of Community Development Director stating that an additional rack ~~or a larger rack~~ is being installed. The letter shall show the proposed location, which must be approved by the Department of Community Development Director, prior to installation of the rack.
- ~~k.~~ l. No more than one mobile commercial food vendor shall be permitted on the property at any one time. Any food vendor operating on the site shall be duly licensed by all appropriate agencies.
- ~~l.~~ m. The food vendor ~~and his or her vehicle and equipment~~ *[The food vendor has requested to leave the vehicle on-site overnight. Town staff notes that town vehicles do remain on site overnight but staff is concerned about potential liability issues if a private vehicle remains on site.]* shall only be permitted on site during the program's ~~standard~~ operating hours.

~~m.n.~~ All pedestrian circulation and vehicular circulation areas shall be asphalt or concrete, with pavers or concrete to be used for a walk to the restrooms and in the vicinity of the bicycle rack.

~~n.o.~~ No more than 150 day workers shall be permitted on site at any one time. The site coordinator shall do periodic counts of the workers to determine the number of workers on site. [*Reflects current operating procedures*]

~~o.p.~~ With the exception of traffic circulation into and out of the site, the area of operations shall be confined as shown on the plan dated May 23, 2007. All vehicle traffic shall enter and exit the site via the Sterling Road/Route 606 entrance/exit. Vehicle traffic associated with the site shall not utilize the Rock Hill Road entrance/exit to the parcel and shall not utilize the eastern portion of the site located to the east of the area of operations as shown on the May 23, 2007 plan.

~~p.q.~~ All activities on site shall be carried out in a lawful manner, as determined by the appropriate and authorized Town, Virginia, or federal authorities, including but not limited to the Herndon Police, Fairfax County Police, Virginia State Police, United States Department of Homeland Security, and United States Department of Justice. Nothing in this condition shall be construed to suggest or require that the zoning administrator enforce any set of laws other than the Town's zoning ordinance. The Project Hope and Harmony/Reston Interfaith ~~the applicant.~~ shall make available to employers using the site information concerning:

- federal prohibitions against hiring aliens unauthorized to work in the United States; and
- the related federal employment eligibility verification system.

~~q.r.~~ The site and any buildings or structures on the site shall be maintained in good order, free from litter or trash, and in a presentable, well maintained and safe manner, as determined by the zoning administrator and building official using recognized standards.

~~r.s.~~ The longevity of this use and use permit is limited to the time limits imposed by Section ~~78-107~~ 78-403-(G)(6) of the Zoning Ordinance and shall be based upon the effective date of this resolution.

~~s.t.~~ ~~The governance team~~ staff of the Temporary Assembly Site for Day Workers shall provide the Town of Herndon Community Development staff with semi-annual reports indicating the number of workers and

employers entering the site per week and the reason and nature of any sanctions imposed by the ~~governance team~~ staff or the assembly of workers.

~~t.u.~~ The number of lavatories available to the employees, participants and volunteers shall meet applicable State and local regulations.

~~v.~~ ~~This conditional use permit shall expire within one year of its effective date if the proposed use has not commenced, unless the period of validity is extended, in accordance with Section 78-105 of the zoning ordinance.~~*[Obsolete]*

~~u.w.~~ This conditional use permit special exception may be terminated by the Town Council, following public hearing, based upon information provided by the zoning administrator, if the use is not operated in accordance with the zoning ordinance and the approved conditions.

~~v.x.~~ This conditional use permit special exception runs with the land identified as Fairfax County Tax Map 010-3-002, Parcel 7D, and is not transferable to other properties.

~~w.y.~~ The adopted “Code of Conduct” shall prohibit laborers registered at the site from congregating and lingering outside of the non-designated portion of the property.

~~z.~~ ~~Prior to the applicant’s 3<sup>rd</sup> request for extension as allowed under the zoning ordinance, a proposed plan shall be provided for the relocation of the Temporary Assembly Site for Day Workers.~~ *[The applicant is now the Town]*

~~x.aa.~~ Trash collection services, including payment therefore, shall be the responsibility of the applicant Project Hope and Harmony/Reston Interfaith.

~~ab.~~ ~~Amend Policy 6 of Project Hope and Harmony’s Operating Policies and Procedures to read: PH&H will convene a Community Advisory Board made up of a diverse group of Town of Herndon, adjacent Fairfax County and adjacent Loudoun County stakeholders including but not limited to an appointee selected by each of the following: the Town of Herndon Town Council, the Fairfax County Board of Supervisors, and the Loudoun County Board of Supervisors.~~ *[This item has been incorporated into the Operating Policies.]*

~~ac.~~ ~~Amend Policy 6 of Project Hope and Harmony’s Operating Policies and Procedures to specify what organizations in addition to those specified~~

~~above shall be entitled to name members of the Community Advisory Board. [This item has been incorporated into the Operating Policies.]~~

~~ad. Prior to commencement of the hiring activity at the site, the applicant shall provide the Department of Community Development Director with the following: guidelines for equitable and appropriate distribution of employment opportunities, the Code of Conduct, and standard consequences and sanctions for trespassing on private property when coming to and from the site and being on the site for non-legitimate reasons. Project Hope and Harmony shall provide copies of any future amendments to these documents to the Director of Community Development prior to the amendment within two weeks of adoption of the amendment. [Obsolete]~~

y.æ. Employment related accessory uses limited to language classes, provision of work-related information, including but not limited to worker to worker classes on specific trades, guidance concerning workplace norms, how to avoid being cheated out of wages, how to seek wages due, how to file taxes and other work related government documents, and referrals to off-site services may be provided on site during standard operating hours to workers registered and waiting for work. In addition the Project Hope and Harmony/Reston Interfaith will accept donations of food and other items for distribution to the workers.

z.æf. If Project Hope and Harmony/Reston Interfaith utilizes funds from Fairfax County, it shall comply with the requirements of Fairfax County for utilization of those funds and shall provide to the Town a copy of all written reports that are submitted to the County at the same time that they are submitted to the County.

The proposed conditions for Operator B are as follows:

- a. The temporary assembly site for day workers shall be open for business at least 6 days a week for at least 5 hours a day, and shall open no later than 6:00 a.m. on weekdays and 7:00 a.m. on weekend days. The assembly site shall not be open on the following Federal Holidays: New Year's Day, Martin Luther King Jr. Day, Presidents Day, Memorial Day, Independence Day, Labor Day, Veterans Day, Thanksgiving and December 25th. The site may close without notice due to dangerous weather. A calendar of dates for closure will be published annually and updated and posted on the operator's website.

- b. In addition to any other procedures and guidelines developed by the operator, the operator shall inform each worker upon initial arrival and registration at the site that only public sidewalks and streets shall be used when coming to and from the site and that trespassing on private property is illegal and will not be tolerated. Furthermore, an aerial photo of the site shall be posted at the site indicating the preferred routes to the site.
- c. The operator shall inform each employer coming to the site that, if they are providing workers a ride back from the employer's job site, the drop off point shall not be the day labor facility but rather another point mutually convenient to the employer and laborer unless the laborer must be dropped off at the day labor site for the purpose of retrieving a vehicle or bicycle left there. This information may be provided orally or in writing. Vehicles shall not remain on site overnight.
- d. Prior to taking control of the site, the operator shall develop documents, policies and procedures to control the operation of the Temporary Assembly Site for Day Workers. The operator shall be responsible for implementing and enforcing these documents, policies and procedures during operating hours. Daily operations covered by these documents shall include, but not be limited to the Code of Conduct and rules for the distribution of employment. These documents, policies and procedures and any future amendments shall be submitted to the Town of Herndon Director of Community Development for Town review and approval, if they are approved, at least 2 weeks prior to adoption. Adoption shall be dependent upon Town approval.
- e. The adopted Code of Conduct shall provide for the Temporary Assembly Site for Day Workers safe, convenient and orderly operation and use. It shall include but not be limited to the following:
  - Prohibition of day workers registered at the site from congregating and lingering outside of the non-designated portion of the property;
  - Prohibition of on-site possession of, use of, and/or intoxication by alcohol or illicit drugs on the part of any site personnel or participants;
  - Prohibition of on-site possession or use of weapons on the part of any site personnel or participants; and
  - Prohibition of actual or threatened physical violence on-site on the part of any site personnel or participants;
  - Prohibition of day workers registered at the site from trespassing on private property when coming to and from the site;



And the disciplinary actions that will be taken related to any infractions of the Code of Conduct.

- f. The operator will be fully responsible for the operation of the Temporary Assembly Site for Day Workers. The operator will ensure safe and orderly conduct during all operating hours, and will connect day laborers and employers in an orderly, efficient and equitable manner.
- g. While the Temporary Assembly Site for Day Workers is in operation, it shall be staffed by at least 2 employees or duly authorized volunteers of the operator, of which at least one will be a paid staff member.
- h. The operator shall impose sanctions against workers identified by the Town of Herndon Police, Loudoun Sheriff's Department or Fairfax County Police as having trespassed on private property when coming or going to the site; and operator shall investigate and where appropriate impose sanctions against workers that are identified by members of the surrounding communities or the Town of Herndon staff as having trespassed on private property when coming or going from the site.
- i. The operator shall impose sanctions against workers who are identified by the Town of Herndon Police, Loudoun Sheriff's Department or Fairfax County Police as having remained at the site after closing or returned to the site after closing and remained longer than needed to retrieve their bicycle or vehicle, and shall investigate and where appropriate impose sanctions against workers that are identified by members of the surrounding residential or business communities or the Town of Herndon staff as having remained at the site after closing or returned to the site after closing for a purposed other than authorized by these conditions for a period of time longer than deemed valid. In general, a worker who remains on the site for longer than one-half hour without a valid reason will be considered to have remained too long.
- j. The operator's staff and volunteers will be allowed at the Temporary Assembly Site for Day Workers outside the hours and days of operation only for the purposes of planning, reporting, troubleshooting, employer inquiries, and other work-related issues. No operator activities will occur at the site in the absence of authorized personnel.

- k. The operator's employees and staff volunteers will receive training regarding all policies, procedures and work processes prior to working or assisting at the site.
- l. The operator shall provide a bicycle rack to be included on the operator's site plan submission. If the bicycle rack proves inadequate for the demand, an additional rack will be provided by the operator. Prior to installation of the new rack, the operator shall submit a letter to the Department of Community Development Director stating that an additional rack is being installed. The letter shall show the proposed location, which must be approved by the Department of Community Development Director prior to installation of the racks.
- m. No more than one mobile commercial food vendor shall be permitted on the property at any one time. Any food vendor operating on the site shall be duly licensed by all appropriate agencies. The food vendor and his or her vehicle and equipment shall only be permitted on site during the program's standard operating hours.
- n. All pedestrian circulation and vehicular circulation areas shall be asphalt or concrete.
- o. No more than 150 day workers shall be permitted on site at any one time. The operator's method for determining and ensuring compliance of this limitation shall be provided within the adopted policies and procedures.
- p. With the exception of traffic circulation into and out of the site, the area of operations shall be confined as shown on the plan dated May 23, 2007 and submitted with this application. Vehicle traffic associated with the site shall not utilize the Rock Hill Road entrance/exit to the parcel and shall not utilize the eastern portion of the site located to the east of the area of operations as shown on the May 23, 2007 plan.
- q. All activities on site shall be carried out in a lawful manner, as determined by the appropriate and authorized Town, Virginia, or federal authorities, including but not limited to the Herndon Police, Fairfax County Police, Virginia State Police, United States Department of Homeland Security, and United States Department of Justice. Nothing in this condition shall be construed to suggest or require that the zoning administrator enforce any set of laws other than the Town's zoning ordinance.

- r. Information will be posted at all times in a location visible to workers awaiting employment and employers utilizing the site detailing an employer's responsibility in hiring, treatment of workers, and employer liability for worker safety and health.
- s. The operator will maintain information to be available to employers about their rights and responsibilities in the area of fair labor practices and federal employment guidelines.
- t. The operator will verify that all workers utilizing the Temporary Assembly Site for Day Work are legally authorized to work in the United States. The operator will develop and maintain a system for documenting worker eligibility according to acceptable industry standards. This process shall be included with the adopted policies and procedures document.
- u. Upon successful completion of worker screening and registration, all participants will be issued a site identification card with photograph that must be shown at all subsequent visits to the site. In addition, participants will be required to sign-in on a daily basis.
- v. It is the responsibility of the operator to maintain the site and any associated structures in good order free from litter or trash, and in a presentable, well maintained and safe manner, as determined by the zoning administrator and building official using recognized standards. Refuse collection services and janitorial services, including payment therefore, shall be the responsibility of operator.
- w. The longevity of this use and use permit is limited to the time limits imposed by Section 78-403-(G)(6) of the Zoning Ordinance and shall be based upon the effective date of this resolution.
- x. The operator shall provide the Town of Herndon Community Development Director with semi-annual reports indicating the number of workers and employers entering the site per week and the reason and nature of any sanctions imposed by the operator.
- y. Employment related accessory uses limited to language classes, provision of work-related information, including but not limited to worker to worker classes on specific trades, guidance concerning workplace norms, how to avoid being cheated out of wages, how to seek wages due, how to file taxes and other work related government documents, and referrals to off-site services may be provided on site during standard operating hours to workers registered and waiting for work.

- z. Accessory to the primary use of the site as a Temporary Assembly site for Day Workers, the operator may offer other employment related services including other types of temporary worker employment. All temporary and permanent employment services shall meet the conditions of this approval.
- aa. Prior to the installation or construction of any of the exterior elements shown on the generalized development plan dated May 23, 2007 or any additional related facilities, the operator shall submit a site plan revision to the Town for administrative review and approval. In addition to the site plan, all exterior elements including signage proposed by the operator are subject to the standard application requirements regarding Architectural Review Board review and approval.
- ab. This conditional use permit special exception may be terminated by the Town Council, following public hearing, based upon information provided by the zoning administrator, if the use is not operated in accordance with the zoning ordinance and the approved conditions.
- ac. This special exception runs with the land identified as Fairfax County Tax Map 010-3-002, Parcel 7D, and is not transferable to other properties

**PREPARED BY:**

Elizabeth M. Gilleran, Senior Planner

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Henry G. Bibber, Director of Community Development

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**ATTACHMENTS:**

1. Location Map
2. Site Layout Plan (Operator A)
3. Site Layout Plan (Operator B)
4. Applicant's Statement
5. Approved Conditions
6. Project Hope and Harmony/Reston Interfaith Operation Policies and Procedures (amended to reflect proposed conditions)
7. Project Hope and Harmon/Reston Interfaith Employment Distribution System
8. Project Hope and Harmony/Reston Interfaith Code of Conduct
9. Project Hope and Harmony/Reston Interfaith Annual Report and Cover Letter

